

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 98-0078**

**Sales Tax**

**Calendar Years 1994, 1995, and 1996**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE(S)**

I. **Gross Retail Tax** – Exempt Transactions of a Retail Merchant

**Authority:** IC 6-2.5-2-1(a); IC 6-2.5-4-5(c); 45 IAC 2.2-5-8(k)

Taxpayer protests the inclusion of sales prior to its start of business.

II. **Tax Administration** – Fraudulent intent - Penalty

**Authority:** I C 6-8.1-10-4; 45 IAC 15-11-4

Taxpayer protests the penalty assessed.

**STATEMENT OF FACTS**

Taxpayer is engaged in selling used automobiles and is registered to collect Indiana sales tax on those sales. Taxpayer is registered with the Bureau of Motor Vehicles and has a Used Car Dealer License Number.

The taxpayer assesses and collects Indiana sales tax and issues the purchasers ST 108's. A comparison of the amounts collected per ST 108's and the amounts remitted to the Department resulted in an adjustment for under-remitting tax for calendar years 1994 through 1996. Taxpayer also has other outstanding liabilities.

I. **Gross Retail Tax** – Exempt Transaction of a Retail Merchant

### **DISCUSSION**

At issue is whether the taxpayer's sales as shown on departmental records are correct.

Taxpayer has not provided the department with proof that the sales shown on departmental records are incorrect.

In a letter dated February 8, 1998, taxpayer states it did not start business until November 1994. It requested a hearing and time to collect records.

The auditor supports its proposed assessment of sales tax on vehicle purchases with evidence of the taxpayer's Bureau of Motor Vehicle Dealer Title Transactions printout (the BMV Report) during the assessment period. This document lists vehicle seller with dealer license number of 4257M, title number, purchase date, and the amount of sales tax collected. Taxpayer states it was not in business until November 1994. It has the burden of proving the proposed assessment erroneous. IC 6-8.1-5-1(b).

The department has not received evidence to establish that the taxpayer made no sales prior to November 1994. The BMV Report clearly lists transactions beginning in January 1994 under the taxpayer's dealer number. An application was filed on November 12, 1993 to register for the collection of sales tax. The taxpayer remitted sales tax in January 1994. Accordingly, the proposed assessments of sales tax are valid.

### **FINDING**

Taxpayer's protest is respectfully denied.

## **II. Tax Administration –Fraudulent intent – penalty**

### **DISCUSSION**

Taxpayer did not protest the penalty. The department only addresses the penalty issue, as the taxpayer was not present at the hearing.

Since the Department finds that the taxpayer was operating and collecting sales tax throughout the audit period and the taxpayer failed to remit tax collected, it fraudulently withheld tax monies. Taxpayer is registered to collect and remit sales tax.

The taxpayer clearly falls under the guidelines published under 45 IAC 15-5-7.

### **FINDING**

Taxpayer's protest is respectfully denied.

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